

The Honorable John E. Bridges

SUPERIOR COURT OF WASHINGTON FOR CHELAN COUNTY

Timothy Borders, et al,)	
)	
Petitioners,)	No. 05-2-00027-3
)	
vs.)	
)	DECLARATION OF DONALD J.
King County and Dean Logan, et al,)	PORTER IN SUPPORT OF MOTION
)	FOR A PROTECTIVE ORDER
Respondents,)	
)	
Washington State Democratic Central Committee,)	
)	
Intervenor,)	
)	
Libertarian Party of Washington State, and Ruth)	
Bennett Campaign,)	
)	
Intervenors)	

I, DONALD J. PORTER declare as follows:

1. I am over 18 and competent to testify. I am a senior deputy prosecuting attorney for King County. In the above captioned action I represent Dean Logan, Director of King County's Records, Elections, and Licensing Services Division, and Bill Huennekens, King County Superintendent of Elections.

1 2. The petitioners in this action had previously noted depositions of Mr. Logan and
2 Mr. Huennekens for March 15, 2005, and March 17, 2005, respectively. Prior to
3 the scheduled depositions, counsel for the intervenor-respondent Washington
4 State Democratic Central Committee (“democrats”) asked that the depositions be
5 postponed to allow more time for the acquisition and review of documents sought
6 from King County. Counsel for petitioners agreed to postpone the depositions,
7 but indicated that they would re-note the depositions no later than the week of
8 March 28, 2005.

9 3. On March 17, 2005, on behalf of Mr. Logan and Mr. Huennekens, I accepted
10 service of deposition notices by the petitioners resetting the depositions for Mr.
11 Logan and Mr. Huennekens for March 28 and March 31, respectively.
12 Attachment A.

13 4. Also on March 17, I received a copy of a letter written by counsel for the
14 democrats to counsel for the petitioners. Attachment B. In the letter, counsel for
15 the democrats states that they have not yet received necessary documents from
16 King County and documents sought from petitioners in discovery, and that,
17 therefore, the democrats are not prepared to take the depositions on the scheduled
18 dates. Counsel for the democrats asserts a right to both cross examine Mr. Logan
19 and Mr. Huennekens at the petitioners’ depositions and to set separate depositions
20 of the same witnesses at some later unspecified dates.

21 5. Mr. Logan and Mr. Huennekens are both ready and willing to be deposed on
22 March 28 and March 31, respectively. However, neither Mr. Logan nor Mr.
23 Huennekens believes it is reasonable or appropriate that they be required to

1 submit to multiple depositions by the parties at different times. Requiring them to
2 submit to multiple depositions is unduly burdensome to them personally and to
3 the administration of the King County Records, Elections, and Licensing Services
4 Division.

5 6. Since the onset of this action King County has produced thousands of pages of
6 documents to the parties in response to a subpoena *duces tecum* of the petitioners
7 and numerous Public Disclosure Act (“PDA”) requests by both parties. In
8 addition, King County Elections officials have received over 40 PDA requests
9 from the media, state and local politicians, and citizens. While King County has
10 attempted to prioritize requests related to this litigation, the overall burden placed
11 on Elections staff by the public disclosure requests has been enormous.

12 7. On March 8 counsel for the democrats faxed two PDA requests to King County,
13 one addressed to me and the other to Cheryl Broom, which was forwarded to me.
14 Attached together as Attachment C. On March 17, I responded in writing to the
15 democrats’ PDA requests of March 8, by summarizing the status of documents
16 production pursuant to the requests and providing additional estimates as to when
17 King County might be able to complete production. Attachment D. Some of the
18 specific requests within the March 8 PDA request will require a massive labor-
19 intensive undertaking by King County Elections staff.

- 20 ■ Item #1, “Alleged Felons, Deceased Voters, or Double Voters.” See
21 Attachment C. For approximately 900 alleged illegal voters the
22 democrats have asked that King County produce a copy of the poll
23 book signature page, absentee ballot envelope, or provisional ballot

1 envelope for each voter. To satisfy this request, staff must first access
2 a database to determine the manner in which the person voted, then,
3 depending on that information, retrieve from storage the appropriate
4 precinct poll book and locate the specific page in the book for copying,
5 or retrieve from storage and copy the voter's absentee or provisional
6 ballot envelope, whichever is the case. Because the PDA request is
7 related to the election contest litigation, King County has expedited the
8 request and assigned resources in a manner not required by the Public
9 Disclosure Act. To satisfy the request as expeditiously as possible,
10 Elections is allowing staff to volunteer for evening and weekend
11 overtime to work specifically on this project. It is anticipated that all
12 documents responsive to this request can be produced by the close of
13 business on Friday, **March 25**.

- 14 ■ Item #2, "Rejected Provisional Ballots." See Attachment C. The
15 democrats have asked that King County produce a copy of all documents
16 relating to rejected provisional ballots, including a copy of the envelope
17 for all rejected provisional ballots. There were 4997 provisional ballots
18 rejected for various reasons in the general election. On March 16, I
19 provided counsel for the democrats with computer files showing the
20 names of voters whose provisional ballots were rejected and reasons for
21 the rejections. I asked that counsel narrow his request for copies of
22 ballot envelopes to specified rejection categories. To date, the request
23 has not been narrowed. It is anticipated that a copy of all of the

1 approximately 5000 rejected provisional ballot envelopes can be
2 produced by close of business Friday, **April 1**.

- 3 ▪ Item #5, “Cancelled Registrations.” See Attachment C. The democrats
4 have asked that King County “provide copies of any and all documents
5 recording, reflecting, or relating to voter registrations cancelled from
6 January 1, 2004 through the date of your response.” On March 17, I
7 provided counsel for the democrats with computer files showing the
8 names of voters cancelled since January 1, 2004, and the reasons for the
9 cancellations. There have been over 5000 voters cancelled during that
10 time period. There are approximately 10 bankers boxes and six three-
11 ring binders filled with records related to the cancellations. The
12 documents are of irregular shapes and sizes and not conducive to easy
13 copying. In my March 17 letter to counsel I asked that he consider
14 sending someone to inspect the records and indicate which records they
15 want copied. To date, there has been no response to that request, so the
16 PDA request for copies of all documents will be satisfied by
17 approximately Friday, **April 15**.

- 18 8. Should the Court determine that it is reasonable to require that each of the witnesses
19 submit to a single deposition, and should the Court determine that the depositions
20 currently set for March 28 and March 31 should be postponed, there are additional
21 dates to be aware of in the rescheduling of the depositions:

- 22 ▪ Mr. Logan will be out-of-state the **week of April 4** on a previously
23 planned family trip for which tickets have been purchased.

- 1 ▪ Mr. Huennekens will be out-of-state from **April 9 through April 17**
- 2 on a previously planned family trip for which tickets have been
- 3 purchased.
- 4 ▪ King County is conducting a special election on April 26, an
- 5 Emergency Medical and Hospital Services Levy which involves
- 6 approximately 130,000 registered voters. Both Mr. Logan and Mr.
- 7 Huennekens will be unavailable for deposition on election day, **April**
- 8 **26**, and on the dates of the canvassing board meetings: **April 28, May**
- 9 **3, May 5, and May 16.**
- 10 ▪ Both men are scheduled to attend a statewide elections conference in
- 11 Ocean Shores from **May 9 through May 12.**

12 9. I have had several telephone conversations with counsel for both parties dating to
13 before the original scheduling of the depositions for March 15 and 17 in which I
14 clearly expressed that it is unreasonable and unduly burdensome to expect non-
15 party witnesses to submit to multiple depositions in this action, and that on behalf
16 of King County witnesses I would object.

17 10. Before filing the accompanying motion for a protective order I attempted to
18 resolve the matter by conferring with counsel for the parties. On March 21, 2005,
19 my legal assistant notified counsel for all parties to this matter that a telephone
20 conference would be held on March 22, 2005. On March 22, commencing at
21 11:00 a.m., a phone conference was held; participants were myself on behalf of
22 Mr. Logan and Mr. Huennekens, counsel for petitioners, the intervenor-
23 respondent WSDCC, the Secretary of State, and Klickitat County. We were

unable to come to an agreement that would obviate the need for a protective order.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED this 22nd day of March, 2005, at Seattle, Washington.

/s/
DONALD J. PORTER